

## REMARKS

This Amendment is submitted in response to the final Office Action mailed on December 17, 2008. No fee is due in connection with this Amendment. The Director is authorized to charge any fees that may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112701-625 on the account statement.

Claims 1-12 are pending in this application. In the Office Action, Claims 1-12 are rejected under 35 U.S.C. §103. In response, Applicants have amended Claims 1, 3, 8 and 11 and have canceled Claim 2. At least in view of the amendments and/or for the reasons set forth below, Applicants respectfully submit that the rejection should be withdrawn.

Applicants note that Claims 3 and 8 have been amended solely for clarification purposes. These amendments do not add new matter. The amendments are supported in the Specification at, for example, page 1, paragraph 9, lines 4-7 and 9-10; paragraph 15, lines 1-5.

In the Office Action, Claims 1-12 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,499,389 B1 to Probst ("*Probst*"). In response, Applicants have amended Claims 1 and 11 and canceled Claim 2. Applicants respectfully submit that the rejection of Claim 2 is rendered moot by the cancellation of Claim 2. Furthermore, in view of the amendments and/or for at least the reasons set forth below, Applicants respectfully submit that *Probst* fails to disclose or suggest each and every element of independent Claims 1 and 11 and Claims 3-10 and 12 that depend therefrom.

Currently amended independent Claims 1 and 11 recite, in part, a nozzle comprising a mouth for receiving steam, a restriction in a continuation of the mouth, a flared zone along the axis of the restriction and of the mouth to allow the liquid out, an inlet pipe for allowing in liquid, and an air intake formed directly on the inlet pipe as a hole, a slit or a pipe which opens into the inlet pipe, wherein the nozzle is disposable and configured in one piece formed from an assembly of two injection-molded welded plastic shells that are compatible with food use. These amendments do not add new matter. The amendments are supported in the Specification, for example, at page 1, paragraph 9, lines 1-7; page 2, paragraph 25, lines 1-3; paragraph 28, lines 1-2 and 8-10; Figs. 1-5.

Conventional nozzles for use in a cappuccino machine include several parts that must be regularly disassembled to be effectively cleaned. See, Specification, page 1, paragraph 2, lines

1-3 and 10-15. These devices often become clogged with milk, a fatty liquid which can adhere to the device and lead to smells and bacterial growth. See, Specification, page 1, paragraph 2, lines 4-7. However, Applicants have surprisingly discovered that by forming the nozzle in one piece rather than separate parts, there are no regions adjoining parts where milk might be deposited during non-use. See, Specification, page 1, paragraph 14, lines 6-10. Furthermore, because the user cannot merely disassemble the parts to clean them, the user must dispose of the nozzle after a few uses, ensuring good hygiene. See, Specification, page 1, paragraph 10. Therefore, the present claims are directed to a nozzle comprising an air intake formed directly on the inlet pipe as a hole, a slit or a pipe which opens into the inlet pipe, wherein the nozzle is disposable and configured in one piece formed from an assembly of two injection-molded welded plastic shells that are compatible with food use. In contrast, *Probst* fails to disclose every element of the present claims.

For example, *Probst* fails to disclose or suggest an air intake formed directly on the inlet pipe as a hole, a slit or a pipe which opens into the inlet pipe as required, in part, by independent Claims 1 and 11. The Patent Office asserts that *Probst* discloses an air intake extending from the pipe at an angle of 0°. See, Office Action, page 2, lines 20-21. However, the portion of *Probst* relied on by the Patent Office merely discloses an air conduit formed between nozzle arrangement 2 and flow-quantity-limiting element 5. See, *Probst*, column 4, lines 16-27; Figs. 1-2 and 4. The air conduit of *Probst* is thus formed from two separate pieces which fit together to create a gap for air intake. See, *Probst*, Figs. 1-2 and 4.

Unlike the air conduit of *Probst*, the air intake of the present claims is formed directly on the inlet pipe to ensure a limited-time use of the nozzle. By forming the air intake in the claimed manner, liquid milk is prone to solidifying and clogging the air intake hole, slit, or pipe when the nozzle is not being used. Furthermore, the air intake cannot be cleaned merely by separating the pieces forming the air intake as with *Probst*. Therefore, the user must dispose of the nozzle after merely a few uses. See, Specification, page 1, paragraphs 9-10. Nowhere does *Probst* disclose an air intake formed directly on the inlet pipe as a hole, a slit or a pipe which opens into the inlet pipe, nor does the Patent Office cite support for such claimed element. As such, *Probst* fails to disclose an air intake formed directly on the inlet pipe as a hole, a slit or a pipe which opens into the inlet pipe as required, in part, by the present claims.

Moreover, *Probst* fails to disclose a nozzle configured in one piece formed from an assembly of two injection-molded welded plastic shells that are compatible with food use. The Patent Office admits that *Probst* fails to disclose that its nozzle is configured in one piece but nevertheless asserts that forming the nozzle in one piece would have been obvious to one of skill in the art. See, Office Action, page 2, lines 21-22; page 3, lines 5-6. Specifically, the Patent Office relies on the 1893 case of *Howard v. Detroit* for the proposition that forming into one piece an article which has formerly been formed in two pieces and put together necessarily involves only routine skill in the art. See, Office Action, page 3, lines 6-9. However, contrary to the Patent Office's assertion, *Howard* does not hold that forming two pieces into a single piece is always a matter of routine skill in the art. Instead, *Howard* merely found that there was no novelty in that case in using bolts and rivets to secure together particular parts of a stove where other prior art patents disclosed that it was common to secure together parts of a stove. *Howard*, 150 U.S. 164, 168-169 (1893). Unlike the apparatus in *Howard*, the nozzle of the present claims is not merely secured together a particular way but is formed as one piece in order to eliminate regions adjoining parts where milk could be deposited and lead to contamination. See, Specification, page 1, paragraph 14, lines 6-10. *Howard* is also distinguishable from the present case because the Patent Office has not cited any prior art showing that it was common to form a nozzle adapted to a steam outlet as one piece. As such, the Patent Office lacks support for its contention that it would have been a matter of routine skill in the art to form the nozzle of *Probst* as one piece rather than two.

In fact, Applicants respectfully submit that configuring the nozzle of *Probst* into one piece would not have been obvious to one of ordinary skill in the art. *Probst* teaches that that better cleaning can be achieved by using multiple individual elements. See, *Probst*, column 3, lines 43-46; column 4, lines 63-65 (“[f]or cleaning purposes, the element 2 and the additional element 18 are detachably held together by a sleeve”). By using multiple parts, prior art nozzles such as *Probst* create regions where milk can be deposited and thus lead to bacterial contamination. See, Specification, page 1, paragraph 14, lines 6-12. The individual parts must therefore be disassembled in order to clean the nozzle. See, Specification, page 1, paragraph 2, lines 10-12. In direct contrast, the nozzle of the present claims is formed as a single piece to force the user to dispose of the nozzle after a few uses, rather than disassembling the parts to clean the nozzle. See, Specification, page 1, paragraph 10; paragraph 14, lines 8-10. Nowhere

does *Probst* suggest that its nozzle may alternatively be formed in one piece or that doing so would be more hygienic. Instead, *Probst* merely suggest using multiple parts to obtain better cleaning. See, *Probst*, column 3, lines 43-46. Thus, *Probst* fails to disclose or suggest a nozzle configured in one piece formed from an assembly of two injection-molded welded plastic shells that are compatible with food use in accordance with the present claims.

Accordingly, Applicants respectfully request that the rejection of Claims 1-12 under 35 U.S.C. §103(a) to *Probst* be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. In the event there remains any impediment to allowance of the claims that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

  
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